

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

Crim. Action No. 2:19-cr-19
(Judge Kleeh)

ROGER D. CLEM, JR. and
ALTON L. SKINNER, II,

Defendants.

**ORDER ADOPTING REPORT AND RECOMMENDATION [DKT. NO. 39] AND
DENYING DEFENDANTS' MOTIONS TO DISMISS [DTK. NOS. 34, 35]**

Pending in this matter are *Motions to Dismiss the Indictment for Insufficiency* by Defendant Roger D. Clem, Jr. [Dkt. No. 34], and by Defendant Alton L. Skinner, II [Dkt. No. 35]. Those motions were referred to United States Magistrate Judge Michael J. Aloia for consideration by order entered on August 29, 2019 [Dkt. No. 37]. On September 13, 2019, the magistrate judge entered a *Report and Recommendation Recommending Defendants' Motion to Dismiss Be Denied* ("R&R") [Dkt. No. 39].

On May 7, 2019, Defendants Roger D. Clem, Jr. and Alton L. Skinner, II ("Defendants") were charged by Indictment with one count of Conspiracy to Commit Mail Fraud and Wire Fraud in violation of 18 U.S.C. §§ 1341, 1343, and 1349; two counts of Wire Fraud in violation of 18 U.S.C. §§ 1343 and 2; and two counts of Mail Fraud in violation of 18 U.S.C. §§ 1341 and 2 [Dkt. No. 1]. Defendant Clem is charged individually with one count of

Obstruction of Justice in violation of 18 U.S.C. § 1513(c)(2), and Defendant Skinner is charged individually with one count of Obstruction of Justice in violation of 18 U.S.C. § 1512(c)(2) and one count of making a False Statement to a Federal Agent in violation of 18 U.S.C. § 1001(a)(2) [Id.]. Defendants filed motions to dismiss on August 19, 2019 [Dkt. Nos. 34, 35].

The September 13, 2019, R&R recommended that the motions to dismiss be denied [Dkt. No. 39]. The R&R further advised the parties that they had seven days from the date of its filing by which to raise specific written objections [Id. at 13]. It further stated that a failure to file written objections shall constitute a waiver of *de novo* review by the Court and a waiver of appellate review by the Circuit Court of Appeals [Id.]. No party filed objections to the R&R.

When considering a magistrate judge's R&R pursuant to 28 U.S.C. § 636(b)(1), the Court must review *de novo* those portions to which objection is timely made. Otherwise, "the Court may adopt, without explanation, any of the magistrate judge's recommendations to which the [defendant] does not object." *Dellarcirprete v. Gutierrez*, 479 F. Supp. 2d 600, 603-04 (N.D.W. Va. 2007) (citing *Camby v. Davis*, 718 F.2d 198, 199 (4th Cir. 1983)). Courts will uphold portions of a recommendation to which no objection has been made unless they are "clearly erroneous." See *Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005).

Here, objections to the Magistrate Judge's R&R were due on or before Friday, September 20, 2019. To date, neither Defendant has filed any objections. Accordingly, the Court reviewed the R&R for clear error.

Upon careful review of the above, and finding no clear error, the Court **ADOPTS** the R&R [Dkt. No. 39] in its entirety. Defendants' motions to dismiss [Dkt. Nos. 34, 35] are **DENIED**.

It is so **ORDERED**.

The Court **DIRECTS** the Clerk to transmit copies of this Order to counsel of record and the appropriate agencies.

DATED: October 2, 2019

/s/ Thomas S. Kleeh
THOMAS S. KLEEH
UNITED STATES DISTRICT JUDGE